

## City of Fayetteville Staff Review Form

A. 6  
Frisco Trail Southern Extension  
Page 1 of 36

**City Council Agenda Items  
and  
Contracts, Leases or Agreements**

3/20/2012

City Council Meeting Date  
Agenda Items Only

<u>Matt Mihalevich</u>	<u>Engineering</u>	<u>Development Services</u>
<b>Submitted By</b>	<b>Division</b>	<b>Department</b>

**Action Required:**

A resolution accepting a grant agreement with the Walton Family Foundation, approval of an agreement for professional engineering services with Garver, LLC in an amount not to exceed \$189,500 for engineering design related to Frisco Trail (South), and approving a budget adjustment.

\$ <u>189,500.00</u>	\$ <u>216,000.00</u>	<u>Trail Development</u>
Cost of this request	Category / Project Budget	Program Category / Project Name
<u>4470.9470.5814.05</u>	\$ <u>-</u>	<u>Trail Improvements</u>
Account Number	Funds Used to Date	Program / Project Category Name
<u>02016.1201</u>	\$ <u>216,000.00</u>	<u>Sales Tax Cap Imp</u>
Project Number	Remaining Balance	Fund Name

Budgeted Item ☒Budget Adjustment Attached ☒

*James C. Bick* 03-02-2012 Previous Ordinance or Resolution # \_\_\_\_\_  
Department Director Date

Original Contract Date: \_\_\_\_\_

*John B. Kelley* 3-2-12 Original Contract Number: \_\_\_\_\_  
City Attorney Date

*Paul A. Bueh* 3-5-2012  
Finance and Internal Services Director Date

Received in City Clerk's Office 02-12 A10:47 RCVD

*Don Man* 3-6-12  
Chief of Staff Date

Received in Mayor's Office

*Lionel Jordan* 3/6/12  
Mayor Date

ENTERED  
3/2/12  
PH

Comments:

## CITY COUNCIL AGENDA MEMO

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**To:** Mayor and City Council

**Thru:** Don Marr, Chief of Staff  
Jeremy Pate, Development Services Director *JP*  
Chris Brown, City Engineer *CB*

**From:** Matt Mihalevich, Trails Coordinator *MM*

**Date:** March 1, 2012

**Subject:** Frisco Trail grant agreement, engineering contract with Garver, LLC., and budget agreement

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### RECOMMENDATION

Staff recommends a resolution accepting a grant agreement with the Walton Family Foundation, approval of a contract for professional engineering services between the City of Fayetteville and Garver, LLC. in an amount not to exceed \$189,500.00 for engineering design associated with the extension of Frisco Trail south from Martin Luther King Jr. Blvd. to Walker Park and approval of a budget adjustment in the amount of \$216,000.00 to recognize revenue from the Walton Family Foundation and the Home Depot Foundation.

### PROPOSAL:

Currently, the 7.6-mile backbone of the Fayetteville Trail system and southern end of the proposed 36-mile Razorback Regional Greenway terminates at the 5-lane Martin Luther King Jr. Blvd. (Hwy 45/180). The proposed ½ mile Frisco Trail southern extension will provide a safe tunnel crossing under MLK Jr. Blvd and connect to the existing trail in Walker Park. From the Walker Park trail, a future trail will extend south under 15<sup>th</sup> street to connect to the east-west Town Branch Trail. Additionally, this trail project will provide a connection for the Tsa La Gi (Cherokee) trail located just south of MLK Jr. Blvd. Therefore, this proposed ½ mile trail connection is necessary to establish linkages between public amenities and residential and commercial areas.

In 2010, The City of Fayetteville was honored to be selected as a pilot city to develop affordable housing and sustainable transportation with \$500,000 in funding from the Sustainable Cities Institute through the Home Depot Foundation. The Frisco Trail southern extension is an important part of the Sustainable Cities Institute grant because it will provide a safe alternative transportation route for the residents of the proposed affordable housing development to be located just east of Walker Park and \$108,000 of the grant funding has been designated for the trail project.

As part of the Razorback Regional Greenway, this section of Frisco Trail is also eligible for funding through the Walton Family Foundation. In February of 2012, the City submitted a successful application to the Walton Family Foundation for funding in the amount of \$108,000 to be matched dollar to dollar with \$108,000 in funding from the Sustainable Cities Institute through the Home Depot Foundation for a total budget of 216,000 with \$26,500 in contingency funds above the \$189,500 proposal from Garver. The majority of this funding will be used for the design and engineering of the trail, with a commitment from the Walton Family Foundation to provide additional funding for the trail construction planned for

2013. The attached grant #2012-170 agreement has been prepared by the Walton Family Foundation to outline the grant requirements. In the last paragraph of the agreement, the Foundation has requested the agreement be signed by March 5, 2012. Staff has discussed the time frame for City Council approval and the Foundation has agreed that this date is flexible and the grant will not be declined after this date is not met.

Garver, LLC. has been selected through RFQ 11-01 to perform the complete trail design including the tunnel, retaining walls, bridges, and crosswalks. Garver has provided the attached scope of services (Appendix A) and contract for the requested professional engineering services.

**BUDGET IMPACT:**

No City funds are necessary for this request. Funds in the amount of \$108,000 from the Home Depot Foundation will be combined with \$108,000 from the Walton Family Foundation for a total budget of \$216,000. \$189,500 of these funds will be utilized to hire Garver, LLC to perform design work with the remaining \$26,500 to be used as contingency if necessary. A check for the Home Depot Foundation funds has been received and the Walton Family Foundation funds will be received as reimbursement on a quarterly basis.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION AUTHORIZING A CONTRACT WITH GARVER, LLC IN AN AMOUNT NOT TO EXCEED \$189,500.00 FOR PROFESSIONAL ENGINEERING DESIGN SERVICES RELATED TO THE FRISCO TRAIL SOUTHERN EXTENSION, ACCEPTING A FIFTY PERCENT (50%) MATCHING GRANT FROM THE WALTON FAMILY FOUNDATION, INC., AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$216,000.00 RECOGNIZING REVENUE FROM THE WALTON FAMILY FOUNDATION, INC. AND THE HOME DEPOT FOUNDATION

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby authorizes a contract with Garver, LLC in an amount not to exceed \$189,500.00 for professional engineering design services related to the Frisco Trail southern extension.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby authorizes acceptance of a fifty percent (50%) matching grant from The Walton Family Foundation, Inc. to provide funding for the project.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment in the amount of \$216,000.00, a copy of which is attached as Exhibit "A", recognizing revenue from The Walton Family Foundation, Inc. and the Home Depot Foundation.

**PASSED and APPROVED** this 20<sup>th</sup> day of March, 2012.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN**, Mayor

By: \_\_\_\_\_  
**SONDRA E. SMITH**, City Clerk/Treasurer

**City of Fayetteville, Arkansas  
Budget Adjustment Form**

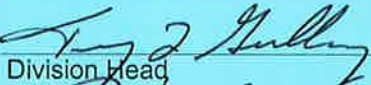



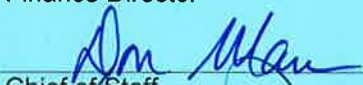

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A. 6  
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<b>Budget Year</b> BY 2012	Division: Citywide Department: Citywide	<b>Request Date</b> 3/20/2012	<b>Adjustment Number</b>
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**BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION**

This budget adjustment recognizes commercial grant revenue from the Home Depot Foundation (\$108,000) and the Walton Family Foundation (\$108,000) for Frisco Trail (South to Walker Park).

This project will tie the Walker Park Neighborhood to the City's main trail system by constructing a spur from Frisco Trail at the Mill District.

 Division Head	3-1-12 Date	Prepared By: John Nelson jnelson
 Budget Director	3-5-12 Date	Reference:
 Department Director	3-1-12 Date	Budget & Research Use Only
 Finance Director	3-5-2012 Date	Type:    A       B       C       D       E       P
 Chief of Staff	3-6-12 Date	General Ledger Date
 Mayor	5/6/12 Date	Posted to General Ledger Initial       Date
		Checked / Verified Initial       Date

TOTAL BUDGET ADJUSTMENT		216,000	216,000	
		Increase / (Decrease)		
Account Name	Account Number	Expense	Revenue	Project.Sub Number
Trails	4470.9470.5814.05	216,000		02016 . 1201
**ADD**Commercial grants	4470.0947.4305.00		216,000	02016 . 1201
				.
				.









National Center for Appropriate Technology

NCAT 3040 Continental Drive • P.O. Box 3838 • Butte, MT 59702 • (406)494-4572 • FAX (406)494-2905 • www.ncat.org

National Center for Appropriate Technology  
Frisco Trail Southern Extension  
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Chris Brown, P.E.  
City Engineer  
City of Fayetteville  
113 W. Mountain Street  
Fayetteville, AR 72701

Dear Chris,

Congratulations on obtaining the 1:1 matching funds from the Walton Family Foundation for the south Fayetteville/Tanglewood Branch trail design! Please find enclosed a check for \$108,000 from our Home Depot Foundation/SCI:Fayetteville project fund that provides the match for the Walton Family Foundation's contribution.

This payment should be filed as a separate sub-line in your accounting system so that there is a clear path to track this payment's expenditure for Garver Engineers to design the trail extension from 6th Street/MLK to Walker Park.

We are proud of our partnership with the City and are excited that the trail extension project is getting underway...this is going to be a huge asset to our community!

Kind Regards,

  
Melissa Terry



**National Center for Appropriate Technology**  
 PO Box 3838, Butte, MT 59702-3838

VENDOR 48319

PO NO.	INVOICE NO.	INVOICE DATE	INVOICE AMOUNT	AMOUNT PAID	OUR REFERENCE
035084	0080875	02/03/2012	108000.00	108000.00	TRAIL EXTENTION 35084
			CHECK TOTAL	108,000.00	



**National Center  
 for Appropriate  
 Technology**

SAFEGUARD LITHO USA SFSL4 CK7508114L

ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER

CHECK NO.	CHECK DATE	VENDOR
066735	02/28/2012	248319

**National Center for  
 Appropriate Technology**  
 PO Box 3838, Butte, MT 59702-3838  
 (406) 494-4572

CHECK NO. **66735**

 **GLACIER BANK**  
 P.O. BOX 3048  
 BUTTE, MT 59702  
 93-7082/2929

ONE HUNDRED EIGHT THOUSAND AND 00/100 DOLLARS

AMOUNT  
 \$\*\*\*108,000.00

PAY TO THE ORDER OF  
 CITY OF FAYETTEVILLE  
 113 W MOUNTAIN STREET  
 FAYETTEVILLE AK 72701

*Kathleen Hadley*  
*Marcia Brown*

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE - RED IMAGE DISAPPEARS WITH HEAT.

⑈066735⑈ ⑆292970825⑆ 190044189⑈

Details on back



Security Features Included



**RECEIVED**

**FEB 23 2012**

CITY OF FAYETTEVILLE  
MAYOR'S OFFICE

February 20, 2012

Lioneld Jordan, Mayor  
City of Fayetteville, AR  
113 W. Mountain  
Fayetteville, AR 72701

Re: Grant #2012-170

Dear Mayor Jordan,

It is my pleasure to inform you that The Walton Family Foundation, Inc. (the "Foundation") has approved a one year grant of up to \$108,000.00 to the City of Fayetteville, AR (the "Grantee"). This grant is subject to the following terms and conditions:

1. **Purpose:** The purpose of the grant is to be used as a 1:1 match for a 2010 Sustainable Cities Institute Grant through the Home Depot Foundation to fund no more than 50% of the cost of the design and engineering for the Frisco Trail Southern Extension not to exceed \$108,000. Grantee agrees to use all grant funds exclusively for the grant's purposes. Any changes in these purposes must be authorized in advance by the Foundation in writing.
2. **Amount: Up to One Hundred Eight Thousand Dollars (\$108,000.00).  
Year One (By December 31, 2012) up to \$108,000.00.**
3. **Matching Grant:** The Foundation's funds will be used to match funds collected by Grantee from a 2010 Sustainable Cities Institute Grant through the Home Depot Foundation.

**Year One** (ending December 31, 2012): one dollar for each one dollar up to \$108,000.00 collected from the 2010 Sustainable Cities Institute Grant through the Home Depot Foundation.

**Expiration:** Proof of receiving the \$108,000.00 grant award from the 2010 Sustainable Cities Institute Grant through the Home Depot Foundation must be obtained by March 8, 2012. In the event the matching grant is not received by March 8, 2012, all outstanding obligations of the Foundation will terminate.

4. **Payable:** Payments shall be made on a drawdown basis no more frequently than quarterly. City of Fayetteville will submit a report outlining work completed as well as funds expended to date and the Foundation will review and, once approved, will reimburse no more than 50% of that total not to exceed 50% of the cost up to \$108,000.

5. **Accounting:** (a) The Foundation encourages, whenever feasible, the deposit of grant funds in an interest-bearing account. For purposes of this letter, the term "grant funds" includes the grant and any income earned thereon.

(b) Grantee will maintain records of receipts and expenditures made in connection with the grant funds and will keep these records during the period covered by the Grantee's reporting obligations specified in paragraph 6 and for at least four years thereafter ("Maintenance Period"). Grantee will make its books and records in connection with the grant funds available for inspection by the Foundation during normal business hours as the Foundation may request at any time during the Maintenance Period.

6. **Reporting and Evaluation:** Grantee will provide the Foundation with a financial and narrative report by the due date listed in the report schedule below. Each report shall include an account of expenditures of grant funds, and a brief narrative of what was accomplished (including a description of progress made in fulfilling the purposes of the grant and a confirmation of Grantee's compliance with the terms of the grant).

Report Date	Report Type
August 31, 2012	Interim Financial and Narrative
February 28, 2013	Final Financial and Narrative

Success will be measured against the outputs and outcomes described in Appendix 1.

All reports will be sent electronically to [HomeRegion@wffmail.com](mailto:HomeRegion@wffmail.com). If you have questions relative to reporting, please contact Janet Post, Home Region Focus Coordinator, 479-464-1576 or, email [jpost@wffmail.com](mailto:jpost@wffmail.com). Please reference Grant #2012-170 on all reports submitted.

7. **Representations:** Grantee represents and warrants to the Foundation that:

(a) Grantee is an organization in good standing, is either an organization described in section 501(c)(3) of the Internal Revenue Code ("Code") or a governmental unit, and is not a "private foundation" described in section 509(a) of the Code. Grantee will promptly notify the Foundation of any change in Grantee's tax status under the Code.

(b) In no event will Grantee use any grant funds:

(i) to carry on propaganda, or otherwise to attempt, to influence legislation;

(ii) to influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive; or

(iii) to undertake any activity other than for a charitable, educational or other exempt purpose specified in section 170(c)(2)(B) of the Code.

(c) Grantee will comply with all applicable laws and regulations.

8. **Repayment:** The Foundation may discontinue any further payments to Grantee, and may direct Grantee to repay any unexpended grant funds to the Foundation, if any of the following events occurs:

(i) Grantee ceases to maintain its tax-exempt status as described in paragraph 7(a) above;

(ii) Grantee fails to comply with the terms of this letter; or

(iii) There is a material change in Grantee's key personnel that in the sole opinion of the Foundation adversely affects Grantee's management of the grant.

9. **Grant Publicity:** Grant publicity related to this grant consistent with Grantee's normal practice is permitted, subject to the following provisions. The Foundation expects any announcements and other publicity to focus on Grantee's work and the project or issue funded by the grant. Recognition of the Foundation's role in funding the project is permitted, provided that the timing, content and strategic focus of such publicity should be approved by the Foundation contact listed in paragraph 10. Publicizing the grant and the Foundation in Grantee's publications and communications in a manner consistent with similar grants obtained by Grantee is permitted.

The Foundation may ask Grantee to provide illustrations, photographs, videos, recordings, information or other materials related to the grant (collectively "Grant Work Product") for use in Foundation communications including the Foundation's website, annual report, newsletters, board materials, presentations, communications and other publications. Grantee agrees to provide the Foundation with such items upon the Foundation's reasonable request and hereby grants to the Foundation and anyone acting under the authority of the Foundation a fully paid-up, world-wide, right and license to use, reproduce, display and distribute the Grant Work Product in connection with the Foundation's charitable operations and activities. In connection therewith, Grantee shall be responsible for obtaining all necessary rights and permissions from third parties for the Foundation to use the Grant Work Product for these purposes. By signing this Agreement, Grantee also acknowledges and agrees to use by the Foundation of historical, programmatic and other information relating to Grantee and the grant hereunder.

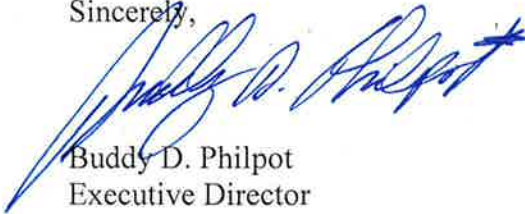
10. **Gratuities:** The Foundation desires that all of Grantee's resources be dedicated to accomplishing its philanthropic purposes. Therefore, Grantee agrees that it will not furnish the Foundation or its Board of Directors, officers, staff or affiliates with any membership, commemorative items, recognition plaques or gratuities or benefits of any kind.

11. **Contact:** For all communications regarding the grant, your point of contact at the Foundation will be Program Officer, Ryan Hale. He can be contacted via phone or email as follows: Telephone number (479) 464-1579, Fax number (479) 464-1580 and Email rhale@wffmail.com.

We have enclosed two original grant letters. Please sign one copy as Grantee's acknowledgment of the terms and conditions herein stated and return it to me in the enclosed self addressed envelope. If the signed acknowledgment of this letter is not received in the Foundation's office by March 5, 2012, the Foundation will consider the Grantee to have declined the grant.

On behalf of the Foundation, I extend every good wish for the success of your organization's endeavors.

Sincerely,



Buddy D. Philpot  
Executive Director

ACKNOWLEDGED AND AGREED

By: \_\_\_\_\_  
Lioneld Jordan (Date)  
Mayor  
City of Fayetteville, AR

## **Appendix 1: City of Fayetteville, AR Frisco Trail Southern Extension Design and Engineering**

### **Output Performance Measures:**

- By 4 months after the grant funding approval date, Alta Planning+Design will assist in the preliminary review of plans prepared by Garver Engineers to insure design concurrence with the Razorback Regional Greenway as evidenced by program and city records. *Estimated date is June 3, 2012.*
- Garver Engineers will deliver a construction-ready trail plan that includes a tunnel, retaining walls, bridges, crosswalk, right of way exhibits and state highway department permitting by 10 months from the grant approval date as evidenced by program and city records. *The estimated date is December 31, 2012; however, this date could be delayed by state highway department permit review.*
- The City of Fayetteville will set a date to begin construction of the Frisco Trail southern extension by December 31, 2012 as evidenced by program and city records. *This will be contingent on construction funding availability.*

### **Outcome Performance Measures:**

- Alta Planning+Design as well as the COF will formally approve the construction ready trail plan delivered by Garver Engineers by 10 months from the grant approval date as evidenced by program and city records. The estimated date is December 31, 2012.

AGREEMENT  
For  
PROFESSIONAL ENGINEERING SERVICES  
Between  
CITY OF FAYETTEVILLE, ARKANSAS  
And  
GARVER, LLC.

THIS AGREEMENT is made as of \_\_\_\_\_, 2012, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and GARVER, LLC (hereinafter called GARVER).

CITY OF FAYETTEVILLE requires professional engineering services in connection with the surveying, design, preparation of property acquisition documents, and partial bidding services for the Frisco Trail extension from Martin Luther King, Jr. Boulevard to Walker Park. Therefore, CITY OF FAYETTEVILLE and GARVER in consideration of their mutual covenants agree as follows:

GARVER shall serve as CITY OF FAYETTEVILLE's professional engineering consultant in those assignments to which this Agreement applies, and shall give consultation and advice to CITY OF FAYETTEVILLE during the performance of GARVER's services. All services shall be performed under the direction of a professional engineer registered in the State of Arkansas and qualified in the particular field.

**SECTION 1 - AUTHORIZATION OF SERVICES**

- 1.1 Services on any assignment shall be undertaken only upon written Authorization of CITY OF FAYETTEVILLE and agreement of GARVER.
- 1.2 Assignments may include services described hereafter as Basic Services or as Additional Services of GARVER.
- 1.3 Changes, modifications or amendments in scope, price or fees to this contract shall **not** be allowed without a formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, costs, fees, or delivery schedule.

## **SECTION 2 - BASIC SERVICES OF GARVER**

### 2.1 General

2.1.1 Perform professional services in connection with the Project as hereinafter stated.

2.1.1.1 The Scope of Services to be furnished by GARVER during the design is included in Section 2.2 hereafter and in Appendix A attached hereto and made part of this Agreement.

2.1.2 GARVER shall coordinate their activities and services with the CITY OF FAYETTEVILLE. GARVER and CITY OF FAYETTEVILLE agree that GARVER has full responsibility for the engineering services.

### 2.2 Engineering Services – Frisco Trail Extension.

2.2.1 Perform engineering services for the design as described in the Scope of Services in Appendix A.

## **SECTION 3 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE**

CITY OF FAYETTEVILLE shall, within a reasonable time, so as not to delay the services of GARVER

3.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.

3.2 Assist GARVER by placing at GARVER's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.

3.3 Assist GARVER in obtaining access to property reasonably necessary for GARVER to perform its services under this Agreement.

3.4 Examine all studies, reports, sketches, cost opinions, proposals, and other documents presented by GARVER and render in writing decisions pertaining thereto.

3.5 The Trails Coordinator is the CITY OF FAYETTEVILLE's project representative with respect to the services to be performed under this Agreement. The Trails Coordinator shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment,

elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.

- 3.6 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to GARVER in a timely manner.

#### **SECTION 4 - PERIOD OF SERVICE**

- 4.1 This Agreement will become effective upon the first written notice by CITY OF FAYETTEVILLE authorizing services hereunder.
- 4.2 The provisions of this Agreement have been agreed to in anticipation of the orderly progress of the Project through completion of the services stated in the Agreement. GARVER will proceed with providing the authorized services immediately upon receipt of written authorization from CITY OF FAYETTEVILLE. Said authorization shall include the scope of the services authorized and the time in which the services are to be completed. The anticipated schedule for this project is included as Appendix A.

#### **SECTION 5 - PAYMENTS TO GARVER**

- 5.1 Compensation

- 5.1.1 Frisco Trail

The maximum not-to-exceed amount authorized for this Agreement is **\$189,500**. The CITY OF FAYETTEVILLE shall compensate GARVER for time spent on the project at the rates described in Appendix B for each classification of GARVER's personnel. In addition, reimbursable expenses, including but not limited to printing, courier service, reproduction, travel, and subconsultants shall be paid to GARVER. For informational purposes, a breakdown of GARVER's estimated costs is included in Appendix B. The rates shown will be increased annually with the first increase effective on or about June 1, 2012.

- 5.1.1.1 Subject to the City Council approval, adjustment of the not-to-exceed amount may be made should GARVER establish and CITY OF FAYETTEVILLE agree that there has been or is to be a significant change in scope, complexity, character, or schedule of the services to be performed; or if CITY OF FAYETTEVILLE decides to shorten the duration of work from the time period specified in the Agreement for completion of work and such modification warrants such adjustment. Changes, modifications or amendments

in scope, price or fees to this Contract shall **not** be allowed without formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost, fees, or delivery schedule.

5.1.1.2 Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE or such parties as CITY OF FAYETTEVILLE may designate for professional services consistent with GARVER's normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project. Applications for payment shall be made in accordance with a format to be developed by GARVER and approved by CITY OF FAYETTEVILLE. Applications for payment shall be accompanied each month by the updated project schedule as the basis for determining the value earned as the work is accomplished. Final payment for professional services shall be made upon CITY OF FAYETTEVILLE's approval and acceptance with the satisfactory completion of the study and report for the Project.

## 5.2 Statements

Statements and progress report for each calendar month will be submitted to CITY OF FAYETTEVILLE. Statements will be based on GARVER's actual time and reimbursable expenses accrued to the project.

## 5.3 Payments

All statements are payable upon receipt and due within thirty (30) days. If a portion of GARVER's statement is disputed by CITY OF FAYETTEVILLE, the undisputed portion shall be paid by CITY OF FAYETTEVILLE by the due date. CITY OF FAYETTEVILLE shall advise GARVER in writing of the basis for any disputed portion of any statement. CITY OF FAYETTEVILLE will make reasonable effort to pay invoices within 30 days of date the invoice is approved. However, payment within 30 days is not guaranteed.

## 5.4 Final Payment

Upon satisfactory completion of the work performed under this Agreement, as a condition before final payment under this Agreement, or as a termination settlement under this Agreement, GARVER shall execute and deliver to CITY OF FAYETTEVILLE a release of all claims against CITY OF FAYETTEVILLE arising under or by virtue of this Agreement, except claims which are specifically exempted by GARVER to be set forth therein. Unless otherwise provided in this Agreement or by State law or otherwise expressly agreed to by the parties to this Agreement, final payment under this

Agreement or settlement upon termination of this Agreement shall not constitute a waiver of CITY OF FAYETTEVILLE's claims against GARVER or his sureties under this Agreement or applicable performance and payment bonds, if any.

## **SECTION 6 - GENERAL CONSIDERATIONS**

### **6.1 Insurance**

6.1.1 During the course of performance of these services, GARVER will maintain (in United States Dollars) the following minimum insurance coverages:

<u>Type of Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation Employers' Liability	Statutory \$500,000 Each Accident
Commercial General Liability Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Automobile Liability: Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Professional Liability Insurance	\$1,000,000 Each Claim

GARVER will provide to CITY OF FAYETTEVILLE certificates as evidence of the specified insurance within ten days of the date of this Agreement and upon each renewal of coverage.

6.1.2 CITY OF FAYETTEVILLE and GARVER waive all rights against each other and their officers, directors, agents, or employees for damage covered by property insurance during and after the completion of GARVER's services.

### **6.2 Professional Responsibility**

6.2.1 GARVER will exercise reasonable skill, care, and diligence in the performance of GARVER's services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices. CITY OF FAYETTEVILLE will promptly report to GARVER any defects or suspected defects in GARVER's services of which CITY OF FAYETTEVILLE becomes aware, so that GARVER can take measures to minimize the consequences of such a defect. CITY OF FAYETTEVILLE retains all remedies to recover for its damages caused by any negligence of GARVER.

### 6.3 Cost Opinions and Projections

Cost opinions and projections prepared by GARVER relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on GARVER's experience, qualifications, and judgment as a design professional. Since GARVER has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors' procedures and methods, unavoidable delays, construction Contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, GARVER does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by GARVER.

### 6.4 Changes

CITY OF FAYETTEVILLE shall have the right to make changes within the general scope of GARVER's services, with an appropriate change in compensation and schedule only after Fayetteville City Council approval of such proposed changes and, upon execution of a mutually acceptable amendment or change order signed by the Mayor of the CITY OF FAYETTEVILLE and the duly authorized officer of GARVER.

### 6.5 Termination

6.5.1 This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

6.5.1.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

6.5.1.2 An opportunity for consultation with the terminating party prior to termination.

6.5.2 This Agreement may be terminated in whole or in part in writing by CITY OF FAYETTEVILLE for its convenience, provided that GARVER is given:

6.5.2.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

- 6.5.2.2 An opportunity for consultation with the terminating party prior to termination.
- 6.5.3 If termination for default is effected by CITY OF FAYETTEVILLE, an equitable adjustment in the price provided for in this Agreement shall be made, but
  - 6.5.3.1 No amount shall be allowed for anticipated profit on unperformed services or other work,
  - 6.5.3.2 Any payment due to GARVER at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of GARVER's default.
- 6.5.4 If termination for default is effected by GARVER, or if termination for convenience is effected by CITY OF FAYETTEVILLE, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to GARVER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by GARVER relating to commitments which had become firm prior to the termination.
- 6.5.5 Upon receipt of a termination action under Paragraphs 6.5.1 or 6.5.2 above, GARVER shall:
  - 6.5.5.1 Promptly discontinue all affected work (unless the notice directs otherwise),
  - 6.5.5.2 Deliver or otherwise make available to CITY OF FAYETTEVILLE all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by GARVER in performing this Agreement, whether completed or in process.
- 6.5.6 Upon termination under Paragraphs 6.5.1 or 6.5.2 above CITY OF FAYETTEVILLE may take over the work and may award another party an agreement to complete the work under this Agreement.
- 6.5.7 If, after termination for failure of GARVER to fulfill contractual obligations, it is determined that GARVER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of CITY OF FAYETTEVILLE. In such event, adjustments of the agreement price shall be made as provided in Paragraph 6.5.4 of this clause.

## 6.6 Delays

In the event the services of GARVER are suspended or delayed by CITY OF FAYETTEVILLE or by other events beyond GARVER's reasonable control, GARVER shall be entitled to additional compensation and time for reasonable costs incurred by GARVER in temporarily closing down or delaying the Project.

## 6.7 Rights and Benefits

GARVER's services will be performed solely for the benefit of CITY OF FAYETTEVILLE and not for the benefit of any other persons or entities.

## 6.8 Dispute Resolution

6.8.1 Scope of Paragraph: The procedures of this Paragraph shall apply to any and all disputes between CITY OF FAYETTEVILLE and GARVER which arise from, or in any way are related to, this Agreement, including, but not limited to the interpretation of this Agreement, the enforcement of its terms, any acts, errors, or omissions of CITY OF FAYETTEVILLE or GARVER in the performance of this Agreement, and disputes concerning payment.

6.8.2 Exhaustion of Remedies Required: No action may be filed unless the parties first negotiate. If timely Notice is given under Paragraph 6.8.3, but an action is initiated prior to exhaustion of these procedures, such action shall be stayed, upon application by either party to a court of proper jurisdiction, until the procedures in Paragraphs 6.8.3 and 6.8.4 have been complied with.

### 6.8.3 Notice of Dispute

6.8.3.1 For disputes arising prior to the making of final payment promptly after the occurrence of any incident, action, or failure to act upon which a claim is based, the party seeking relief shall serve the other party with a written Notice;

6.8.3.2 For disputes arising within one year after the making of final payment, CITY OF FAYETTEVILLE shall give GARVER written Notice at the address listed in Paragraph 6.14 within thirty (30) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature

and amount of relief sought, the reason relief should be granted, and the appropriate portions of this Agreement that authorize the relief requested.

6.8.4      Negotiation: Within seven days of receipt of the Notice, the Project Managers for CITY OF FAYETTEVILLE and GARVER shall confer in an effort to resolve the dispute. If the dispute cannot be resolved at that level, then, upon written request of either side, the matter shall be referred to the President or Chief Engineer of GARVER and the Mayor of CITY OF FAYETTEVILLE or his designee. These officers shall meet at the Project Site or such other location as is agreed upon within 30 days of the written request to resolve the dispute.

6.9           CITY OF FAYETTEVILLE represents that it has sufficient funds or the means of obtaining funds to remit payment to GARVER for services rendered by GARVER.

6.10           Publications

Recognizing the importance of professional development on the part of GARVER's employees and the importance of GARVER's public relations, GARVER may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to GARVER's services for the Project. Such publications will be provided to CITY OF FAYETTEVILLE in draft form for CITY OF FAYETTEVILLE's advance review. CITY OF FAYETTEVILLE shall review such drafts promptly and provide CITY OF FAYETTEVILLE's comments to GARVER. CITY OF FAYETTEVILLE may require deletion of proprietary data or confidential information from such publications, but otherwise CITY OF FAYETTEVILLE will not unreasonably withhold approval. The cost of GARVER's activities pertaining to any such publication shall be for GARVER's account.

6.11           Indemnification

6.11.1       CITY OF FAYETTEVILLE agrees that it will require all construction Contractors to indemnify, defend, and hold harmless CITY OF FAYETTEVILLE and GARVER from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractors, or their employees, agents, Subcontractors, and Suppliers.

6.12           Computer Models. GARVER may use or modify GARVER'S proprietary computer models in service of CITY OF FAYETTEVILLE under this agreement, or GARVER may develop computer models during GARVER's service to CITY OF OFAYETTEVILLE under this agreement. Such use, modification, or development by GARVER does not constitute a

license to CITY OF FAYETTEVILLE to use or modify GARVER's computer models. Said proprietary computer models shall remain the sole property of GARVER. CITY OF FAYETTEVILLE and GARVER will enter into a separate license agreement if CITY OF FAYETTEVILLE wishes to use GARVER's computer models.

#### 6.13 Ownership of Documents

All documents provided by CITY OF FAYETTEVILLE including original drawings, disks of CADD drawings and cross sections, estimates, specification field notes, and data are and remain the property of CITY OF FAYETTEVILLE. GARVER may retain reproduced copies of drawings and copies of other documents.

Engineering documents, drawings, and specifications and other hard copy or electronic media prepared by GARVER as part of the Services shall become the property of CITY OF FAYETTEVILLE when GARVER has been compensated for all Services rendered, provided, however, that GARVER shall have the unrestricted right to their use. GARVER shall, however, retain its rights in its standard drawings details, specifications, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of GARVER.

Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. GARVER makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the event of a conflict between the sealed original drawings/hard copies and the electronic files, the sealed drawings/hard copies will govern.

#### 6.14 Notices

Any Notice required under this Agreement will be in writing, addressed to the appropriate party at the following addresses:

CITY OF FAYETTEVILLE's address:  
113 West Mountain Street  
Fayetteville, Arkansas 72701

GARVER, LLC's address:  
2049 E. Joyce Blvd, Suite 400  
Fayetteville, Arkansas 72703

6.15 Successor and Assigns

CITY OF FAYETTEVILLE and GARVER each binds himself and his successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither CITY OF FAYETTEVILLE nor GARVER shall assign, sublet, or transfer his interest in the Agreement without the written consent of the other.

6.16 Controlling Law

This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Arkansas without regard to any conflicts of law provisions.

6.17 Entire Agreement

This Agreement represents the entire Agreement between GARVER and CITY OF FAYETTEVILLE relative to the Scope of Services herein. Since terms contained in purchase orders do not generally apply to professional services, in the event CITY OF FAYETTEVILLE issues to GARVER a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether or not signed by GARVER, shall be considered as a document for CITY OF FAYETTEVILLE's internal management of its operations.

**SECTION 7 - SPECIAL CONDITIONS**

7.1 Additional Responsibilities of GARVER

7.1.1 CITY OF FAYETTEVILLE's review, approval, or acceptance of design drawings, specifications, reports and other services furnished hereunder shall not in any way relieve GARVER of responsibility for the technical adequacy of the work. Neither CITY OF FAYETTEVILLE's review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

7.1.2 GARVER shall be and shall remain liable, in accordance with applicable law, for all damages to CITY OF FAYETTEVILLE caused by GARVER's negligent performance of any of the services furnished under this Agreement except for errors, omissions or other deficiencies to the extent attributable to CITY OF FAYETTEVILLE or CITY OF FAYETTEVILLE-furnished data.

7.1.3 GARVER's obligations under this clause are in addition to GARVER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that CITY OF FAYETTEVILLE may have against GARVER for faulty materials, equipment, or work.

## 7.2 Remedies

Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between CITY OF FAYETTEVILLE and GARVER arising out of or relating to this Agreement or the breach thereof will be decided in a court of competent jurisdiction within Arkansas.

## 7.3 Audit: Access to Records

7.3.1 GARVER shall maintain books, records, documents and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied in effect on the date of execution of this Agreement. GARVER shall also maintain the financial information and data used by GARVER in the preparation of support of the cost submission required for any negotiated agreement or change order and send to CITY OF FAYETTEVILLE a copy of the cost summary submitted. CITY OF FAYETTEVILLE, the State or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. GARVER will provide proper facilities for such access and inspection.

7.3.2 Records under Paragraph 7.3.1 above, shall be maintained and made available during performance on assisted work under this Agreement and until three years from the date of final payment for the project. In addition, those records which relate to any controversy arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

7.3.3 This right of access clause (with respect to financial records) applies to:

7.3.3.1 Negotiated prime agreements:

7.3.3.2 Negotiated change orders or agreement amendments in excess of \$10,000 affecting the price of any formally advertised, competitively awarded, fixed price agreement.

7.3.3.3 Agreements or purchase orders under any agreement other than a formally advertised, competitively awarded, fixed price agreement. However, this right of access does not apply to a prime agreement, lower tier subagreement or purchase order awarded after effective price competition, except:

7.3.3.3.1 With respect to record pertaining directly to subagreement performance, excluding any financial records of GARVER;

7.3.3.3.2 If there is any indication that fraud, gross abuse or corrupt practices may be involved;

7.3.3.3.3 If the subagreement is terminated for default or for convenience.

#### 7.4 Covenant Against Contingent Fees

GARVER warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by GARVER for the purpose of securing business. For breach or violation of this warranty, CITY OF FAYETTEVILLE shall have the right to annul this Agreement without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

#### 7.5 Gratuities

7.5.1 If CITY OF FAYETTEVILLE finds after a notice and hearing that GARVER or any of GARVER's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of CITY OF FAYETTEVILLE, in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, CITY OF FAYETTEVILLE may, by written notice to GARVER terminate this Agreement. CITY OF FAYETTEVILLE may also pursue other rights and remedies that the law or this

Agreement provides. However, the existence of the facts on which CITY OF FAYETTEVILLE bases such finding shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

7.5.2 In the event this Agreement is terminated as provided in Paragraph 7.5.1, CITY OF FAYETTEVILLE may pursue the same remedies against GARVER as it could pursue in the event of a breach of the Agreement by GARVER. As a penalty, in addition to any other damages to which it may be entitled by law, CITY OF FAYETTEVILLE may pursue exemplary damages in an amount (as determined by CITY OF FAYETTEVILLE) which shall be not less than three nor more than ten times the costs GARVER incurs in providing any such gratuities to any such officer or employee.

#### 7.6 Arkansas Freedom of Information Act

City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request is presented to the CITY OF FAYETTEVILLE, GARVER will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE, ARKANSAS by and through its Mayor, and GARVER, by its authorized officer have made and executed this Agreement as of the day and year first above written.

CITY OF FAYETTEVILLE, ARKANSAS

GARVER

By : \_\_\_\_\_  
Mayor, Lioneld Jordan

By:  \_\_\_\_\_  
Brock Hoskins, PE

ATTEST:

By: \_\_\_\_\_  
City Clerk

Title: Sr. Vice President/Chief Engineer

Changes, modifications or amendments in scope, price or fees to this Contract shall **not** be allowed without formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, cost, fees, or delivery schedule.

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

## APPENDIX A – SCOPE OF SERVICES

### 2.1 General

Generally, the scope of services includes surveying, design, and preparation of property acquisition documents and partial bidding services to the City of Fayetteville Frisco Trail. Improvements will consist primarily of the extension of Frisco Trail from Martin Luther King, Jr. Boulevard to the existing trail located in Walker Park including 0.5 miles of a 12-ft wide trail with partial lighting, a tunnel, a new bridge, and the restoration or replacement of an existing railroad truss bridge.

### 2.2 Surveys

#### 2.2.1 Design Surveys

Garver will provide field survey data for designing the project, and this survey will be tied to the Owner's control network.

Garver will conduct field surveys, utilizing radial topography methods, at intervals and for distances along the project site as appropriate for modeling the existing ground, including locations of pertinent features or improvements. Garver will locate buildings and other structures, streets, drainage features, trees over eight inches in diameter, visible utilities as well as those underground utilities marked by their owners and/or representatives, and any other pertinent topographic features that may be present at and/or along the project site. Garver will establish control points for use during construction.

#### 2.2.2 Property Surveys

Garver will locate existing monumentation representing right of way and/or easements based on record data which will be provided by an abstractor under a subconsultant agreement with Garver.

### 2.3 Geotechnical Services

Garver will subcontract with Grubbs, Hoskyn, Barton & Wyatt to provide geotechnical investigations and recommendations for the design of the bridge and tunnel as specified in the attached proposal and made a part of this agreement. The City of Fayetteville will provide the typical section to be utilized for the design of the trail.

### 2.4 Coordination

Garver will furnish plans to all known utility owners potentially affected by the project at the conceptual and final stages of development. Garver will conduct a coordination meeting among all known affected utility owners to enable them to coordinate efforts for any necessary utility relocations. Garver will include the surveyed locations of the observable and marked utilities in the construction plans. Garver will also include proposed and/or relocated utility information in the construction plans as provided by the utility companies.

Garver will furnish final plans to the following agencies: NWARPC, AHTD, ADEQ, COE, USFWS, for their review and comment.

Garver will also attend coordination meetings with the City of Fayetteville and other agencies as required. Garver will prepare exhibits for these meetings when appropriate.

## **2.5 Environmental Services**

Garver will perform wetland delineation for the Spout Spring Branch creek crossing located in Walker Park. Garver will work to obtain a Nationwide Permit for the project from the US Army Corps of Engineers and to obtain clearance from the US Fish and Wildlife Service (USFWS) and the State Historic Preservation Office (SHPO).

In addition, Garver will provide design of BMP devices and stream bank stabilization as necessary to meet or exceed the requirements of the City of Fayetteville Streamside Protection Ordinance.

## **2.6 Drainage Study**

Garver will utilize the existing HEC-HMS and HEC-RAS hydrologic models for the design of a new bridge across the Spout Springs Branch Creek at Walker Park. Modeling parameters, such as areas, slopes, drainage paths, and distances will be obtained from Owner-provided planimetric contour maps and aerial photos and verified by field investigations. Runoff characteristics for non-developed areas will be based on current land-use plans.

Garver will utilize the modified HEC-RAS hydraulic model for design of the creek crossing and trail construction within the designated FEMA floodplain/floodway to achieve a "No-Rise" in the water surface elevation during the 100-year rainfall event. The remainder of the drainage system for the project will be designed in accordance with the City of Fayetteville Drainage Criteria Manual.

Garver will develop a drainage report including the following:

- Existing HEC-HMS model data.
- HEC-RAS modified model results and supporting data.
- Drainage Computations for minor crossings and the MLK Jr. Tunnel.
- Summary of Results.

Garver will coordinate with COE to acquire a Nationwide permit for Spout Springs Branch Creek crossing.

## **2.7 Schematic Study**

The Schematic Study phase will include an alignment study of the tunnel under MLK, Jr. Boulevard and the portion of the trail located between the tunnel and the existing railroad truss bridge over the Tanglewood Branch Creek. The study will include coordination with the City of Fayetteville, property owners and their representatives, and the AHTD. Two alignment options will be studied with an opinion of probable costs for each option.

In addition, the existing railroad truss bridge will be analyzed to determine the feasibility of

refurbishment including a structural analysis of the existing substructure, recommendations of improvements, and opinion of probable construction costs. A cost comparison will be provided for a total bridge replacement.

## **2.8 Conceptual Design (30% Submittal)**

The conceptual design phase submittal will include typical sections, plan & profile sheets showing horizontal alignment, bridge improvements to the existing railroad truss bridge, new bridge and tunnel structures, major drainage structures, existing utilities, recommended water and sewer relocations, recommended mitigation for work within the City stream bank protection zones, right-of-way requirements, Drainage Study preliminary results, COE Nationwide permit draft, pedestrian study for the Highway 71B trail crossing, and an opinion of probable construction cost. This conceptual submittal will represent 30 percent of final construction contract plans and will be for the purpose of coordinating the proposed improvements with the Owner and the utility companies and developing an order of magnitude cost estimate for the project.

Garver will prepare exhibits and attend one public meeting. Garver's exhibits for this public meeting will address the City's conceptual design comments. The exhibits will include a current set of full-sized plans and foam display boards at a 1"=20' scale, utilizing aerial photographs and property information.

Garver will furnish plans to all known utility owners potentially affected by the project and coordinate a joint meeting.

The Engineer will not begin preliminary design until the conceptual design is approved by the Owner in writing.

## **2.9 Preliminary Design (60% Submittal)**

The preliminary design phase submittal will include typical sections, plan & profile sheets showing horizontal and vertical alignment, bridge improvements to the existing railroad truss bridge or design of new bridge at this location, new bridge and tunnel structures, 9<sup>th</sup> Street adjustments, drainage improvements, Highway 71B crossing and signalization, lighting for tunnel and approaches, maintenance of traffic plans, signing and striping, water and sewer relocations, Drainage Study, COE Nationwide permit, AHTD permit draft and an opinion of probable construction cost. The preliminary design phase will represent approximately 60 percent of final construction contract plans. This submittal will not include technical specifications or "front end" contract documents. Garver will not begin final design until the preliminary design is approved by the City of Fayetteville in writing.

Garver will furnish plans to AHTD and COE for their review and comment.

## **2.10 Final Design (90% & 100% Submittals)**

During the final design phase of the project, Garver will conduct final designs to prepare construction plans and specifications, for one construction contract, including final construction details and quantities, technical specifications, special provisions, and opinion of probable construction cost. Garver will also make final field inspection with the City of Fayetteville, make

any needed plan changes as a result of the final field inspection and/or special easement acquisition considerations, and prepare the construction documents as required to advertise for bids.

Garver will furnish final plans to all known affected utility owners, NWARPC, AHTD, and Arkansas Department of Health for their review and comment.

Garver will also prepare, submit, and coordinate approval of a Stormwater Pollution Prevention Plan (SWPPP) and Short-Term Activity Authorization (STAA) with ADEQ.

## **2.11 Property Acquisition Documents**

Garver will provide mapping as required for preparing Right-of-Way/Easement acquisition documents for the City of Fayetteville's use in acquiring the property. Documentation will include an individual tract map with description of temporary and permanent acquisition for each property. The City of Fayetteville will provide a standard easement acquisition document or "go-by" example for use by Garver. The fee for providing property acquisition documentation is based on permanent right of way and temporary construction easements for no more than ten (10) properties. Property acquisition document preparation will begin after receiving the City of Fayetteville's comments from the Preliminary Design review.

## **2.12 Bidding Services**

During the bidding phase of the project, Garver will:

1. Prepare and submit Advertisement for Bids to the City of Fayetteville. City of Fayetteville will pay advertising costs outside of this contract.
2. Dispense construction contract documents to prospective bidders (at the approximate cost of reproduction and handling).
3. Support the contract documents by preparing addenda as appropriate.
4. Participate in a pre-bid meeting if necessary.
5. Attend the bid opening.
6. Prepare bid tabulation.
7. Evaluate bids and recommend award.
8. Prepare construction contracts.

## **2.13 Construction Phase Services**

The scope and fee for Construction Phase Services will be inserted by amendment to this agreement at a later date.

## **2.14 Project Deliverables**

The following will be submitted to the City of Fayetteville, or others as indicated, by Garver:

1. Two (2) copies of the preliminary Drainage Report and two (2) copies of the final Drainage Report.
2. Two (2) copies of the Geotechnical Report.
3. Three (3) copies of the Schematic Study.

4. Three (3) copies of the Conceptual Design with opinion of probable construction cost.
5. One (1) copy of the revised Conceptual Design and revised Final Plans to each franchise utility company.
6. Three (3) copies of the Preliminary Design with opinion of probable construction cost.
7. Three (3) copies of the Final Design with opinion of probable construction cost.
8. Three (3) copies of the revised Final Design with opinion of probable construction cost.
9. Three copies (3) of the right-of-way and/or easement acquisition documents.
10. Electronic files as requested.

## 2.15 Extra Work

The following items are not included under this agreement but will be considered as extra work:

1. Payment of review fees or advertisement costs.
2. Design of plans and survey in AHTD format.
3. Redesign for the Owner's convenience or due to changed conditions after previous alternate direction and/or approval.
4. Submittals or deliverables in addition to those listed herein.
5. Trail pavement Design beyond that furnished in the Geotechnical Report.
6. Design of any utilities relocation other than water and sewer.
7. Construction materials testing.
8. Wetlands mitigation design.
9. Coordination with FEMA and preparation/submittal of a CLOMR and/or LOMR.
10. Providing services necessary for obtaining an Individual 404 permit from the Corps of Engineers.
11. Construction Phase Services.
12. As-Built Drawings.
13. Services after construction, such as warranty follow-up, operations support, etc.

Extra Work will be as directed by the Owner in writing for an additional fee as agreed upon by the Owner and the Engineer.

## 2.16 Schedule

The Engineer shall begin work under this Agreement within ten (10) days of a Notice to Proceed and shall complete the work in accordance with the schedule below:

<u>Phase Description</u>	<u>Calendar Days</u>
Geotechnical Engineering	30 days from start date
Surveys - Design and Property	45 days from start date
Schematic Study	45 days from start date
Conceptual Design(30%)	45 days from approval of Schematic Study
Preliminary Design(60%)	45 days from approval of Conceptual Design
Final Design(90%)	60 days from approval of Preliminary Design
Property Acquisition Documents	15 days from approval of Final Design
Final Construction Documents(100%)	15 days from approval of Final Design

**APPENDIX B**  
**Frisco Trail / 11047140**  
**Garver Hourly Rate Schedule**

<b>Classification</b>	<b>Rates</b>
<b>Engineers / Architects</b>	
E-1	\$ 88.00
E-2	\$ 104.00
E-3	\$ 123.00
E-4	\$ 145.00
E-5	\$ 176.00
E-6	\$ 215.00
<b>Planners</b>	
P-1	\$ 106.00
P-2	\$ 124.00
<b>Designers</b>	
D-1	\$ 83.00
D-2	\$ 111.00
<b>Technicians</b>	
T-1	\$ 71.00
T-2	\$ 94.00
<b>Surveyors</b>	
S-1	\$ 42.00
S-2	\$ 52.00
S-3	\$ 70.00
S-4	\$ 99.00
S-5	\$ 127.00
2-Man Crew (Survey)	\$ 160.00
3-Man Crew (Survey)	\$ 200.00
2-Man Crew (GPS Survey)	\$ 180.00
3-Man Crew (GPS Survey)	\$ 220.00
<b>Construction Observation</b>	
C-1	\$ 80.00
C-2	\$ 108.00
C-3	\$ 144.00
<b>Administration</b>	
X-1	\$ 49.00
X-2	\$ 66.00
X-3	\$ 109.00

## APPENDIX B

### CITY OF FAYETTEVILLE FRISCO TRAIL

#### FEE SUMMARY

<b>Title I Services</b>	<b>Estimated Fees</b>
<i>Geotechnical Services (G,H,B&amp;W)</i>	\$8,100.00
<i>Record Research (10 Parcels)</i>	\$1,500.00
<i>Utility Marking</i>	\$700.00
Signalization Design	\$10,000.00
Surveys	\$24,350.00
Drainage Study	\$4,650.00
Electrical Design	\$10,400.00
Schematic Study	\$14,500.00
Conceptual Design	\$14,800.00
Preliminary Design	\$34,200.00
Final Design	\$56,400.00
Property Acquisition Documents	\$5,150.00
Bidding Services	\$4,750.00
<b>Subtotal for Title I Services</b>	<b>\$189,500.00</b>
<b>Title II Services</b>	
<i>Construction Materials Testing</i>	\$0.00
Construction Phase Services	\$0.00
<b>Subtotal for Title II Services</b>	<b>\$0.00</b>